

Date of decision: 02/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAVINBHAI P PATEL

vs

D D O

Appearance:

MR PB MAJMUDAR	for Petitioner
MR HS MUNSHAW	for Respondent No. 1

Coram : MR.JUSTICE C.K.THAKKER

#### ORAL JUDGEMENT

Rule. Mr.Munshaw appears and waives service of rule on behalf of the respondent. In the facts and circumstances of the case, the matter is taken up to day for final hearing.

2. This petition is filed by the petitioner for quashing and setting aside the departmental inquiry sought to be initiated against him after undue and unexplained delay of about 9 years after the incident and after the petitioner retired in May 95 on reaching the age of his superannuation, being illegal, ultra vires and violative of fundamental rights guaranteed under the Constitution of India. It is the case of the petitioner that he was appointed on July 23, 1996 as Social Worker. In course of time

he was promoted to the post of Block Extension Educator and he retired on reaching the age of superannuation on 31.5.1995. It is his case that prior to the date of retirement on May 30, 1995, a charge-sheet came to be issued. The petitioner is challenging the said charge-sheet being illegal and ultra vires.

3. Mr.Majudar, learned counsel for the petitioner contended that looking to the impugned charge-sheet, annexed at Annexure.A, certain allegations were levelled against the petitioner. The counsel contended that all the allegations relate to the period between 1983 to 1986. There was no earthly reason, in these circumstances, to issue charge-sheet at the fag end of the retirement of the petitioner and by keeping hanging sword on him and also by depriving of his retiral benefits. It was also contended that for similar allegations, show cause notice was issued to the petitioner as early as on May 12, 1986 wherein it was alleged that the petitioner had spent additional amount of Rs.486960 ps. and that the petitioner was called upon to furnish his explanation as to why the said amount should not be recovered from him. The petitioner submitted his reply and when no action was taken thereafter, an inference can be drawn that the authority was satisfied and because of that only no further proceeding was taken. The impugned action of issuing notices dt. 21st May 1995 and 31st May 1995 is ,therefore, contrary to law and requires to be quashed and set aside.

Heavy reliance was placed on the decision of the Hon'ble Supreme Court of India in the case of State of Madhya Pradesh v. Bani Singh, AIR 1990 SC 1308, In that case also, departmental proceedings were initiated after more than 12 years and the Central Administrative Tribunal quashed the notice and departmental proceedings on the ground of gross delay. When the State approached the Apex Court, upholding the said order the Hon'ble Supreme Court observed that since there was gross and unexplained delay of more than 10 years, the inquiry was required to be quashed. In the instant case also, according to the petitioner, there was gross delay and there is no explanation whatsoever in the charge-sheet and further that when in 1986 notice was issued and it was replied , no proceedings could have been initiated in 1995 i.e. after more than 9 years of the date of issuance of the first notice. After the notice was issued by this court, an affidavit-in-reply is filed by Deputy District Development Officer, (R) Baroda District Panchayat.

Regarding delay it was stated that the petitioner was involved in serious charges of financial irregularities and violation of financial rules and regulations. It is further stated that one Dr.Mrs.Panigrahi, Medical Officer was also found to be responsible. As the Medical Officers is Class-II Gazetted Officer, the Competent Authority and Disciplinary Authority is not other than the Commissioner of Health, Medical Services and Medical

Education, Government of Gujarat and hence the proceedings were pending before the said Authority. The said proceedings were over on 25th August 1994 and thereafter the present proceedings were initiated against the petitioner. No doubt, Mr.Majmudar contended that the said fact must be considered as an after thought inasmuch as in the charge-sheet it was not mentioned. In my opinion, it is not necessary that this fact ought to have been mentioned in the charge-sheet. When the proceedings against the Medical Officer, class II, were over in August 1994 and the charge-sheet was issued against the petitioner in May 1995, it cannot be said that there is gross delay on the part of the respondent in initiating the proceedings against the petitioner. Hence, I do not see any substance in the contention regarding delay.

It is also stated by the respondents that the petitioner has committed financial irregularities. Moreover, according to the respondents, following amounts are to be recovered from the petitioner.

i) P.T.A. recovery-

Village Chandod Rs.6,619/-

ii) Income-tax recovery at

village Savli Rs.2,504/-

iii) Housing Building Loan

(penalty & interest) Rs.19,678/-

iv) Scooter loan advance

(penalty & interest) Rs.1,679/-

v) Amount to be recovered

as per Audit para no.68

of 1992-93. Rs.1,075/-

It is also asserted by the Department that except the amount of gratuity and computation of pension, the petitioner is entitled to other retiral benefits. Regarding gratuity, reliance was placed on Rule 189-B of the Bombay Civil Services Rules. Similarly, with regard to computation of pension, it is stated that as per the Government resolution, said amount can be paid only after departmental inquiry is over. Mr.Majmudar, learned counsel for the petitioner states that full pension is ordered to be paid to the petitioner. If any formality is undertaken for the said purpose and if the petitioner will cooperate, the said amount will be paid to him. In the facts and circumstances of the case, in my opinion, since there is no gross and unreasonable delay on the part of the respondent in initiating inquiry, it cannot be said that the inquiry requires to be quashed and set aside under extra ordinary powers under Art.226 of the Constitution of India. Instead I direct the respondent authorities to complete inquiry as early as

possible particularly when the petitioner has retired with effect from 31.5.1995 after office hours. About one year has passed and in these circumstances, it is directed that the respondents will complete the inquiry against the petitioner as expeditiously as possible preferably within four months from the receipt of the writ. It is, however, clarified that the petitioner will cooperate at the said inquiry.

The learned counsel for the petitioner submits that so far as one of the incidents is concerned, there is gross delay and law laid down by the Hon'ble Supreme Court of India in Bani Singh's case (supra) clinches the issue. When I am not quashing the departmental proceedings, I may clarify that it is open to the petitioner to take all the contentions including one on which the arguments were advanced and reliance was placed in Bani Singh's case. As and when departmental proceeding is taken, the respondent authorities will decide the same.

Rule is accordingly made absolute to the above extent. No order as to costs.